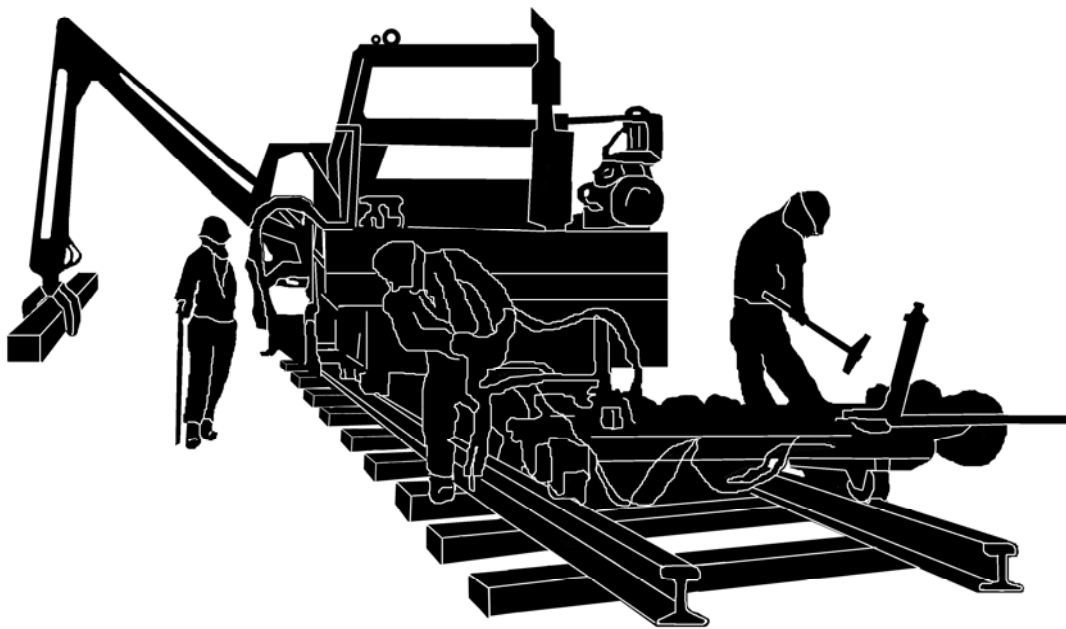


RAIL PRESERVATION PROGRAM

FY2010 Application Procedures



Revised November 26, 2008

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Rail Preservation Policy

Effective April 1, 1999, it is the policy of the Commonwealth Transportation Board (CTB) to consider railways and rail corridors as important elements of the Statewide Transportation System. The CTB supports the use of funds for projects deemed important elements of the Statewide Transportation System. Such consideration shall include the acquisition, lease, improvement, or assistance to appropriate entities in the acquisition, lease, or improvement of railways, and equipment, and the purchase of abandoned railway rights-of-way for transportation purposes that the CTB determines are for the common good of the Commonwealth or a region of the Commonwealth.

The Department of Rail and Public Transportation Director shall administer and expend or commit, subject to the approval of the CTB, such funds as may be set forth in the Appropriations Act for this purpose. Such funds may be expended or provided in the form of grants or loans to others to improve railways, equipment, or related facilities specific to rail operations on public or private property and to acquire or lease railway properties for transportation purposes. Any properties purchased can be leased to others for continuation of rail service. No funds shall be used for general railroad operating expenses. Costs incurred for the administration of approved projects shall be an eligible expense under this policy.

In allocating funds for improvement, the CTB shall consider the project cost in relation to the prospective use, line capacity, and the economic and public benefits. In allocating funds for purchase, the CTB shall consider the potential for future public uses of the properties. The CTB shall adopt procedures for the allocation and distribution of the funds as may be provided, including provisions for safeguarding the Commonwealth's interest in all projects.

Rail Preservation Procedures

- A. The Director of the Virginia Department of Rail and Public Transportation (DRPT), administers, expends, or commits, subject to the approval of the Commonwealth Transportation Board (CTB), such funds for acquiring, leasing, or improving or constructing railways and related facilities, and purchasing railway properties, and equipment for transportation uses. Funds may be spent directly by the Director or by reimbursement of the local entities, private or public.
- B. DRPT may develop projects for the consideration of the CTB or receive applications from others for such projects.
- C. All applications from others for rail funds shall be submitted by the applicant to DRPT. Each application shall be accompanied by a resolution from the appropriate local government or Transportation District Commission supporting that such funds be allocated to the proposed project. Each application shall be considered on the basis of its merits.
- D. The Rail Division of DRPT acts as staff to receive and process applications and supervise the expenditure of funds. All applications shall be submitted by February 1 (Administratively amended to February 1, 2009) of each year to DRPT in accordance with the guidelines outlined in the Rail Preservation Application Process Memorandum. DRPT reviews the applications and state projects, including developing analyses and comments, and transmit same to the Director, for review and concurrence prior to presentation to the CTB. The Director of DRPT develops recommendations for the CTB to select projects and establish priorities, in accordance with its policies, and the procedures contained herein.
- E. As a general guide for staff analysis, no more than 50 percent of the funds shall be recommended for any applicant in any fiscal year unless it is determined that there are not sufficient applications to use the available funds or a project has been determined to be of major significance to the Commonwealth. Final allocations shall be determined by the CTB.
- F. In deciding whether to allocate funds for a project, the CTB shall consider the potential for future public uses of the property and/or the cost thereof in relation to the prospective rail use, and other economic and public benefits, and the common good of the Commonwealth or a region of the Commonwealth. Freight improvement projects must have a benefit-cost analysis of greater than one except in the case of a safety project which is not eligible under another safety program. Passenger projects will be based on

service needed and capacity constraints. Projects may be considered for purchase if they have a potential for rail or other future transportation uses.

- G. Funds may be provided in the form of grants or loans to acquire, lease, improve, or assist other appropriate entities to acquire, lease, or improve railways, related facilities, and equipment on public or private property, and to purchase railway properties for rail service and other transportation purposes.
- H. Funds may be provided to local governments, authorities, agencies, Transportation District Commissions or non-public sector entities for rail projects funded under the program at a maximum 70% state and minimum 30% local match. Funds provided for Class I rail operators for freight purposes may be in the form of loans to be repaid over a period of years at an interest rate to be determined by the Director and approved by the CTB. No funds may be used for general railroad operating expenses. These funds may also be used as a portion of the non-federal share for the utilization of federal funds by public or private parties. Funds may also be used to match other non-state grants obtained by the applicant. These funds will provide no more than 70 percent of the local share of the Federal matching requirement. Additionally, funds may be provided for administration of a project on a 70-30 match basis with a maximum administration reimbursement of 5 percent of the total projects cost or \$50,000 per year, whichever is less. Also, funds may be provided to assist in obtaining a qualified assessment and engineering of the necessary track structure and bridge improvement needs.
- I. Funds may be granted or loaned to the current or prospective owners of a Short Line railroad to purchase or refinance operating railway properties. The maximum amount of any loan may be limited by the net liquidation value. The owners may repay part of the loan over 20 years at an interest rate to be determined by the Director, with approval by the CTB. The Commonwealth shall retain an interest in the property with an option to buy the balance if the rail operation is not continued as originally intended.
- J. The actual amounts loaned, their repayments, schedules, loan provisions, and interest charged shall be established by the Director and approved by the CTB. The loan amounts shall not exceed the funds made available for any railway by the CTB. The Commonwealth shall retain a contingent interest in any project for which loans are provided until such time as the Commonwealth has been reimbursed.
- K. The Commonwealth may purchase lines for Short Line rail service or other transportation purposes. Said lines could be leased to others for rail transportation purposes at a rate to be determined and recommended by the Director, with approval by the CTB. Such lines purchased shall not be subject to a time limitation for retention.

- L. The Commonwealth will retain an interest in materials installed in tracks, and facilities reconstructed or improved with grant funds from the Commonwealth until the Commonwealth's interest is repaid or the useful life as determined by the Director has expired. The useful life determination shall have the approval of the CTB.
- M. The recipient of funding shall be contractually committed to the perpetual maintenance of such tracks and facilities, and/or property and to the payment of any costs related to the future relocation or removal of such tracks and facilities. Where applicable, the recipients or their subcontractors shall also be contractually committed to provide for the continued operation of rail service as a common carrier and to assume all liability in connection with the implementation and operation of the project. The Commonwealth shall be advised of any change in the carrier status.
- N. The Commonwealth may allow the recipient of funds to purchase the Commonwealth's interest in a railway, equipment, and facilities at a value determined by the Director and the approval of the CTB.
- O. In the event the recipient of funds desires to sell property or interest in railway equipment and facilities which have been acquired, reconstructed, or improved under this program, said sale shall be subject to the Commonwealth's vested interest and written approval.
- P. The Commonwealth does not consider any rail with a weight of less than 112 lbs./yd to be an acceptable size for use in the track structure. Rail Preservation monies will not be utilized to pay for or pay to have installed any rail less than the minimum accepted size. The use of lighter than 112 lbs./yd rail or other low production rail is discouraged because of the scarcity of tie plates and joint bars.
- Q. DRPT's goal is to assist in bringing all Short Lines to a Class 2 Track Safety Standard operation as prescribed in the Track Safety Standards publication as part of the Federal Railroad Administration's Title 49 Part 213 regulations. The achievement of this plan will depend on the availability of funding. Once reached, the track shall be maintained at this level. This requirement may be waived in the case of an emergency. Additionally, applications for funds must provide a plan that outlines bringing their track structure and bridges to a minimum Class 2 Track Safety Standards and, if necessary, structures to a load limit of 286,000 pounds. These plans must be submitted at time of application. All applicants submitting request for funds starting in FY 2000 with rail lines below Class 1 Track Safety Standards must submit a plan to bring their rail lines to Class 1 Track Safety Standards within a reasonable amount of time.

The Director of the Department of Rail and Public Transportation shall utilize the guidelines developed, as indicated in the Application Process Memorandum for processing the

implementation of these procedures.

Rail Preservation Application Process Memorandum

Pursuant to § [33.1-221.1:1.2](#), Shortline Railway Preservation and Development Fund, this memorandum details the administrative guidelines to be followed by the applicant and the Commonwealth in the allocation of funds for acquiring, leasing, improving, or assisting other appropriate entities to acquire, lease or improve railways and purchase abandoned rail rights-of-way for transportation purposes as authorized in Chapter 10.1 of Title 33.1 of the Code of Virginia. Appropriations for these activities are included in the Budget Bill.

The rail program will be administered by the Director of the Department of Rail and Public Transportation (DRPT) in accordance with decisions of the Commonwealth Transportation Board (CTB). The DRPT Rail Division may develop state projects for the Director for review and concurrence prior to submittal to the CTB. The Department will also act as staff to receive and process applications, to develop analysis and comment, and transmit same to the Director. The Director may solicit comments regarding the applications from others including the State Corporation Commission.

Applications

1. Applications for Rail Preservation Funds shall be submitted to the Department of Rail and Public Transportation by no later than February 1, 2009 (Appendix D). All applications must be accompanied by a resolution supporting the project under the Rail Preservation Program from the local jurisdiction or Transportation District Commission (TDC) in which the project is located (Appendix B-Sample Locality Resolution). Projects will not be submitted to the Commonwealth Transportation Board for consideration without the local resolutions.

2. Applications should be addressed as follows:

Director
Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590

Rail Preservation Program Contact:

Kevin B. Page, Chief of Rail Transportation
Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
Telephone: (804) 786-3963
kevin.page@drpt.virginia.gov

3. Application submitted to the Director should contain the following information:
 - a. A resolution from each local government or Transportation District Commission of which the proposed project is located;
 - b. Location sketch and an outline of the proposed project;
 - c. The estimated annual number of carloads;
 - d. The estimated number of people or full time equivalents to be employed or retained;
 - e. Explanation of project readiness and the expected starting and finishing dates;
 - f. The estimated cost of the projects, including a statement of availability of local match to be provided by the Applicant as well as a certificate of financial and technical capability to complete the work;
 - g. Documentation concerning common carrier status;
 - h. A certification stating who will provide for the continuous maintenance and assume the liability of the tracks and facilities;
 - i. Guarantees as to the right of way for the project;
 - j. Any other information deemed relevant to the proposed project.

Allocation of Funds

The CTB has the authority to establish priorities and allocate funds for a project. As a general guide for DRPT staff analysis, no more than 50 percent of the total available funds for allocation shall be recommended for any single application in any fiscal year unless it is determined that there are not sufficient applications to use the available funds. Additional allocations may be considered by the Board.

Selection Criteria

NOTE: This section is subject to change during this process. DRPT is currently reviewing the Rail Preservation selection criteria. This review and evaluation will probably result in changes to the existing Benefit-Cost and project scoring/evaluation procedures.

Applications submitted will be considered in accordance with their consistency with the policy of the Commonwealth regarding rail transportation, especially those relative to fostering economic development. Acquiring, leasing, constructing, or improving or assisting other appropriate entities to acquire, lease, construct, or improve railways, equipment, and purchase abandoned rail rights-of-way for rail transportation purposes must have a positive impact upon the common good of the Commonwealth or a region of the Commonwealth. Each application for freight improvements will also be considered under the following criteria in the allocation of funds:

- A. Benefit-Cost Ratio;
- B. Potential employment;
- C. Geographic location of the proposed project in relationship to prior allocations;
- D. Small industries where there is a demonstrated need for financial assistance, and both private and public benefits will accrue relative to the costs involved;
- E. The potential for long-term viability or use and maintenance;
- F. Local unemployment rate;
- G. Local contributions;

- H. Project Readiness (ability to be permitted, designed and constructed quickly)
- I. SWAM Participation goal of 40% in the project development and/or construction.

Project Selection and Implementation

NOTE: This section is subject to change during this process. DRPT is currently reviewing the Rail Preservation selection criteria. This review and evaluation will probably result in changes to the existing Benefit-Cost and project scoring/evaluation procedures.

The Rail Division staff, at the Director's discretion, will assemble all necessary data and documents and review the proposals. Staff will consider the above criteria to make the initial proposed distribution of the annual allocation of the Rail Preservation Funds. This information will be provided to the Director, who will provide recommendations to the CTB. The CTB will approve the final allocation of the Rail Preservation Funds.

Following the approval of project funding, the applicants will be notified of the results. The successful applicants will be required to enter into contractual commitments with DRPT in order to receive Rail Preservation funding. In projects involving the improvement of existing tracks or facilities, only those materials installed with the use of program funds shall be subject to a contingent interest by the Commonwealth. Ownership of materials and facilities in place prior to project implementation shall not be affected.

The DRPT will supervise the expenditure of funds, and perform site visits to review construction as appropriate, and prepare documentation of the improvement work performed and materials installed prior to final review and payment. The applicant shall maintain records regarding the projects. An on-site site review will be made on properties proposed for lease or purchase.

Methodology for the Distribution of Funds to Non Safety Projects Under the Rail Preservation Program

NOTE: This section is subject to change during this process. DRPT is currently reviewing the Rail Preservation selection criteria. This review and evaluation will probably result in changes to the existing Benefit-Cost and project scoring/evaluation procedures.

The policy and procedures for the railroad corridor financial assistance program approved by the Commonwealth Transportation Board on July 19, 1990, as amended, was transmitted to the various jurisdictions, commissions, and railroads. These policy and procedures, as amended,

limit each project to a maximum of 70 percent state funds with a minimum 30 percent match coming from a non-state source. Also, the funding for any single application is to be limited to no more than 50 percent of the total available funds for allocation, unless it is determined that there are not sufficient applications to use the available funds.

As part of the evaluation process, visits are to be made to the project locations to accomplish various purposes. The first visit is to determine that the projects are acceptable projects; the second is to collect data to be used in developing the benefit-cost ratios for projects other than safety, purchase, and passenger; and the third is to determine the potential for the continuation of the service. Safety, purchases, and other rail service projects will be considered on their own merit, and recommendations will be made following a separate evaluation process.

A benefit-cost analysis methodology (Appendix A) will be applied to these projects and any project with a benefit-cost ratio of less than one will not be considered as a viable project to be recommended for funding. A list of the parameters including the benefit-cost is included in this package under Selection Criteria and will be used to assist DRPT staff in recommending an equitable distribution of the funds. The purpose of this methodology is to select rail freight projects for implementation that have the greatest merit to the Commonwealth.

APPENDIX A

NOTE: This section is subject to change during this process. DRPT is currently reviewing the Rail Preservation selection criteria. This review and evaluation will probably result in changes to the existing Benefit Cost and project scoring/evaluation procedures.

BENEFIT-COST ANALYSIS

RAIL CORRIDOR PROGRAM

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

REVISED NOVEMBER 1994

Benefit-Cost Analysis Rail Corridor Program

NOTE: This section is subject to change during this process. DRPT is currently reviewing the Rail Preservation selection criteria. This review and evaluation will probably result in changes to the existing Benefit-Cost and project scoring/evaluation procedures.

Background and Introduction

In 1990 the General Assembly passed an amendment to House Bill 30 (HB30) which provided funds for the acquisition, lease, and/or improvement of railways and facilities. In response to this action, the Commonwealth Transportation Board adopted policy and procedures on July 19, 1990. These are amended as the Board determines a need.

As part of the methodology for the equitable distribution of these funds, a benefit-cost analysis was established. The foundation of this analysis was provided by three Federal Railroad Administration (FRA) documents: Benefit-Cost Guidelines Rail Branch Line Continuation Program (February 1980), FRA Simplified Benefit-Cost Methodology (May 1982), and Benefit-Cost Methodology for the Local Rail Freight Assistance Program (draft July 1990).

The Benefit-Cost Methodology

Benefit-cost analysis is generally based on the comparison of two considerations or alternatives. The first alternative is the null alternative and it relates to the status quo (i.e. doing nothing). For a rail service, this usually results in continued service at a reduced level or abandonment. This alternative can result in increased cost for the shipper, loss of employment, and increased highway maintenance cost. The second alternative is the project alternative involving rehabilitation or improvement. This alternative can result in improved service and continued viability of the line.

Simply stated, the benefit cost analysis is represented by the following formula:

$$\frac{\mathbf{B}}{\mathbf{C}} = \frac{\mathbf{Net\ Transportation\ Impact + Net\ Employment\ Impact}}{\mathbf{Cost\ of\ Project}}$$

All of the costs over ten years including salvage value are discounted to present worth and summed for comparison. For a project to be eligible for assistance, the ratio of Benefits to Costs has to be equal to or greater than one.

The following steps must be completed in the benefit-cost analysis:

1. Establishing the project alternative;
2. Determining the project costs;
3. Determining the null alternative;
4. Using the standard ten year planning horizon;
5. Using the FRA published discount rates;
6. Calculating transportation efficiency benefits;
7. Calculating secondary benefits;
8. Calculating salvage value;
9. Calculating the benefit-cost ratio.

Each of the steps is discussed in detail in the Benefit-Cost Methodology for the Local Rail Freight Assistance Program, published by the FRA, 1990.

For the Rail Preservation Program, two situations exist. They are abandonment and continued operation. A ten year planning horizon and an annual discount rate established by FRA are assumed.

APPENDIX B

Sample Locality Resolution

Sample Locality Resolution

Rail Preservation Application

(Railroad Name Here)

WHEREAS, the _____ Railroad desires to file an application with the Virginia Department of Rail and Public Transportation for funding assistance for the projects; and

WHEREAS, _____ Railroad has identified projects that are estimated to cost \$ _____; and

WHEREAS, the General Assembly, through enactment of the Rail Preservation Program, provides for funding for certain improvements and procurement of railways in the Commonwealth of Virginia; and

WHEREAS, the _____ Railroad is an important element of the (County, City, or Town) transportation system; and

WHEREAS, the _____ Railroad is instrumental in the economic development of the area, and provides relief to the highway system by transporting freight, and provides an alternate means of transportation of commodities; and

WHEREAS, the (County, City, Town or Transportation District Commission) of _____ supports the project and the retention of the rail service; and

WHEREAS, the Commonwealth Transportation Board has established procedures for all allocation and distribution of the funds provided.

NOW, THEREFORE, BE IT RESOLVED, that the (County, City, Town or Transportation District Commission) of _____ does hereby request the Virginia Department of Rail and Public Transportation to give priority consideration to the projects proposed by the _____ Railroad.

APPENDIX C

Sample Standard Agreement

(Subject to review or updates and agreement by all parties)

(Subject to review or updates and agreement by all parties)

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

RAIL PRESERVATION FUNDING AGREEMENT

GRANTEE: (Name of Grantee)

PROJECT: (Name of Project)

AGREEMENT NUMBER: (XXXXXX-XX)

RAIL PRESERVATION FUNDING AGREEMENT
(Subject to review or updates and agreement by all parties)

Agreement Number: (XXXXXX-XX)

THIS RAIL PRESERVATION FUNDING AGREEMENT, hereinafter referred to as "Agreement," is made and executed as of the _____ day of _____, 20XX between the Virginia Department of Rail and Public Transportation, hereinafter referred to as the "Department," acting by and through its Director, and (Name of Grantee), hereinafter referred to as the "Grantee."

RECITALS

WHEREAS, the Grantee proposes to do an engineering study, design, and signal construction for the purpose of improving the existing antiquated signal system from Orange to Clifton Forge, Virginia, hereinafter referred to as the "Project"; and

WHEREAS, in accordance with § 33.1-221.1:1.2 of the Code of Virginia (1950), as amended, the Commonwealth Transportation Board (CTB), on June 19, 2008, approved funding for said Project, and determined the Project is for the common good of a region of the Commonwealth or the Commonwealth as a whole; and

WHEREAS, the Grantee acknowledges that this grant is to fund only an engineering study related to capital improvements, and that the funding shall not be used to offset operating costs or to provide operating revenues; and

WHEREAS, the Grantee understands and acknowledges that § 33.1-221.1:1.2(E) of the Code of Virginia 1950, as amended, requires that the tracks and facilities constructed, and property and equipment purchased with funds provided pursuant to this Agreement must be made available for use by all common carriers using the railway system to which they connect; and

WHEREAS, it is desired by the parties hereto to define the extent of the Project addressed herein, the responsibilities of each party, the manner of performing the necessary work, the method and time of payment, and to set out additional conditions associated with the Project; and

WHEREAS, the parties desire to procure the Project for the lowest possible amount.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

DEFINITIONS

Container means a standardized intermodal freight cargo unit that can be loaded onto ships, railroad cars, and trucks. There are several different common standard lengths and heights, with approximate dimensions of 40 to 53 feet in length and 8.5 to 9.5 feet in height.

Contractor(s) means private contractor(s), including consultants, which may be engaged by Grantee to perform the Work.

Designated Representative(s) means a person or persons appointed by the Grantee or the Department to represent, in whole or in part, the party in issues associated with the Work or this Agreement.

Eligible Project Costs means a cost directly associated with the Work.

Force Majeure Event(s) means events which both parties agree affects or prevents either party from timely or properly performing its obligations under this Agreement, and may include fire, flood, war, rebellion, riots, strikes, or acts of God.

Funding Agreement means the agreement that sets the Project Budget and Project funding and provides that the Project shall be completed regardless of overruns that are to be borne at the cost of Grantee.

Grantee Contribution means for the purpose of the statutory match for this Project, a contribution of at least 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources of total Project costs.

Letter of No Prejudice means formal approval from the Department that allows the Grantee to perform preliminary engineering and or design prior to the execution of a Funding Agreement or approval to purchase or order material prior to the Department's issuance of a Notice to Proceed.

Monthly Progress Report means a monthly written progress report including any changes or updates to the Project Schedule, Budget and Project and information.

Notice to Proceed means written notice issued by the Department authorizing the Grantee to commence the Construction of the Project.

Project Budget means the budget for the Work in single or multiple years as broken into total costs, Department and Grantee participation and any subsequent amendments.

Project Invoice Form means the form provided by the Department to the Grantee to use for submission for reimbursement of Eligible Project Costs incurred and paid by the Grantee.

Project Schedule means the schedule for completing the Work as agreed to by the parties and any subsequent amendments thereto.

Re-work means work required to correct deficiencies in the Project brought about by incomplete work, incorrect work, failure to comply with the provisions of this Agreement or state or federal regulations.

Work means any and all tasks, duties, obligations, services, requirements and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by the Grantee as defined as part of this Agreement.

ARTICLE 1

SCOPE OF WORK, BUDGET, AND PROJECT SCHEDULE

Section 1.1 The Work under the terms of this Agreement is as follows:

A. Project Description and Scope of Work

Section 1.2 The initial Project Budget and Project Schedule as an estimate at date of Agreement are as follows:

Total Project Budget	\$XX,XXX,XXX
Maximum Commonwealth Participation:	\$ X,XXX,XXX
Minimum Participation by the Grantee:	\$ X,XXX,XXX
(Grantee minimum participation is 30 percent of the Project Budget)	

It is agreed that the maximum funding for reimbursement by the Department as provided for in its Fiscal Year 20XX through 20XX Program of Projects shall be as follows:

Fiscal Year 20XX	\$XXX,XXX
Maximum Commonwealth Participation:	\$XXX,XXX
Minimum Participation by the Grantee:	\$XXX,XXX
(Grantee minimum participation is 30 percent of the Project Budget)	

Fiscal Year 20XX	\$XXX,XXX
Maximum Commonwealth Participation:	\$XXX,XXX
Minimum Participation by the Grantee:	\$XXX,XXX
(Grantee minimum participation is 30 percent of the Project Budget)	

Fiscal Year 20XX	\$XXX,XXX
Maximum Commonwealth Participation:	\$XXX,XXX
Minimum Participation by the Grantee:	\$XXX,XXX
(Grantee minimum participation is 30 percent of the Project Budget)	

<u>Project Schedule Description</u>	<u>Date of Milestone</u>
Milestone dates are estimates only and there shall be no penalty for non-compliance	
Planning, Design, and Engineering Completion	(Date)
Construction Start Date	(Date)
Construction Completion Date	(Date)
Project Acceptance by Commonwealth	(Date)
Performance Period Start Date	(Date)
Performance Period Completion Date	(Date)
Project Closeout Date	(Date)

Amounts not spent in Fiscal Year 20XX through 20XX shall be carried over into Fiscal Year 20XX, so that the entire \$XXX,XXX is available for reimbursement for Eligible Project Costs during the life of the Project. It is understood by the parties that the initial Project Budget as stated above is an estimate as of the date of contracting only, and may be lower or higher by the time of construction and/or completion of construction. The Grantee acknowledges that the Commonwealth's share of the Project Cost cannot exceed the amount allocated by the CTB.

Section 1.3 All work shall be competitively bid and contract shall be awarded to the lowest responsible bidder. The provisions of this Section do not preclude the Grantee from performing the Work specified in this Agreement with its own forces.

Section 1.4 In the event that the Grantee receives subsequent allocation(s) of state funding from another source or federal funding applicable to this Project, the allocation(s) set forth

herein from the Shortline Railway Preservation and Development Fund shall be reduced by the amount of the subsequent allocation(s).

Section 1.5 Any cost of completing the Work in excess of the Project Budget shall be the responsibility of the Grantee. However, the Grantee has the right to revise the plans and/or specifications of the Work at its discretion so that total Project costs do not exceed the Project Budget provided that the Work is completed as described in Article 1.

Section 1.6 A Monthly Progress Report including any changes or updates to the Project Budget and Schedule, and information as provided will be submitted to the Department. The Report will make particular reference to progress towards completing milestones contained in the Progress Schedule. A sample Monthly Progress Report with required information in addition to the Project Budget and Schedule submission is provided in Attachment A.

Section 1.7 Funding availability is subject to annual appropriation by the General Assembly and allocation by the Commonwealth Transportation Board.

Section 1.8 The Grantee certifies that it has the financial and technical capability to complete the work in accordance with this Agreement. The Grantee is responsible for constructing or having the Project proposed under the application constructed.

ARTICLE 2

PLANNING, DESIGN, ENGINEERING, CONSTRUCTION, AND TERMS

Section 2.1 By execution of this Agreement, the Department is providing approval of the initial Project Scope, Project Budget and Project Schedule specified in Article 1, Section 1.1.A. Accordingly, the Grantee is able to incur Eligible Project Cost(s) from the date of execution of this agreement to support preliminary engineering, design, and development of the final Project Budget and Project Schedule for submission to the Department. The Department's approval does not make any warranty as to the accuracy or suitability of the information submitted, nor does it relieve the Grantee of any liability under this Agreement. Such submissions provided shall contain the approval of the Grantee in those situations where the submitter is not the Grantee.

Section 2.2 The Grantee shall not commence the Work described in Article 1.1B until the Department has issued in writing a Notice to Proceed for this Work. Prior to issuing the Notice to Proceed, the Grantee must submit a final Scope of Work, Project Budget, and a Project Schedule for each part of the work to the Department according to the milestone date provided in Article 1, Section 1.2 for approval. The Final Project Budget and Project Schedule shall be attached to this Agreement along with Notice to Proceed for Work specified in Article 1.

Section 2.3 In the event the Grantee desires to perform preliminary engineering, design, or order any material for the Work prior to receiving Notices to Proceed from the Department, the Grantee shall formally request a Letter of No Prejudice from the Department (Attachment B). The costs for such preliminary engineering, design, or material will only be considered Eligible Project Costs if the costs are incurred after issuance of the Department's Letter of No Prejudice and upon the issuance of Notices to Proceed. However, nothing shall obligate the Department to reimburse the Grantee for any portion of the cost of such design or material in the absence of the Department's Letter of No Prejudice or Notices to Proceed.

Section 2.4 The Department reserves the right to reject any Plans, Specifications, Project Budget or Project Schedule because the Department's own analysis reveals that significant cost or schedule savings could be achieved through other contracting means than Grantee proposes, and meet the Grantee's performance and/or Project requirements.

Section 2.5 The Grantee shall design and construct according to the most recently approved Project Budget and Project Schedule.

Section 2.6 Notwithstanding any other provision in this Agreement, the Grantee shall inspect or shall have inspected the Work to:

- A. Ensure that it complies with the contract specifications;
- B. Verify quantitative measures of materials installed, such as tie counts; and
- C. Verify labor and materials charges for contracts providing for payment on an actual cost basis.

Section 2.7 Notwithstanding any other provision in this Agreement, if the Grantee, the Department, or inspectors duly authorized to uphold applicable federal, state, and local laws regarding construction and operating practices, determines that any material or construction is not in accordance with the Grantee's standards as informed by the American Railway Engineering and Maintenance-of-Way Association (AREMA), or any applicable federal, state, or local law, the Grantee shall replace materials or correct any workmanship necessary to cure the deficiency. The Grantee shall not use any funds provided under this Agreement to pay for a replacement or correction required under this subsection.

Section 2.8 Notwithstanding any other provision in this Agreement, the Department may take any action, including the inspection of the Project site and all books and records of the Grantee, any Contractor or subcontractor, relating to any project or task receiving funds under this Agreement, to review activities under this Agreement and the adequacy of the Grantee's

monitoring efforts.

Section 2.9 Notwithstanding any other provision in this Agreement, the Department shall have access to the Project at all times to inspect and to protect its interest in the Project. The Department representatives will not enter the Grantee's right-of-way without the Grantee's representatives available to provide any necessary protection from train movements. The Department's representatives will comply with all safety rules and regulations of the Grantee, and safety instructions from the Grantee's representatives. The Department and any of its agents who perform inspections shall execute the Grantee's standard form right of entry prior to entry on the Grantee's property at no cost to the Department.

Section 2.10 Notwithstanding provisions of this agreement, the Grantee will provide to the Department, by the tenth day of every month from date of this Agreement, monthly the number of full time employees, revenue carloads (excluding carloads carrying reported Containers), Containers, and revenue intercity or commuter rail passengers carried over the rail line represented by the Grantee in its application for the funds provided by this agreement. The Grantee will provide annually, by no later than July 10th of each calendar year from the date of this Agreement, the number of full time employees, revenue carloads (excluding carloads carrying reported Containers), Containers, and revenue intercity or commuter rail passengers carried over the rail line represented by the Grantee in its application for the funds provided by this Agreement. The annual report period shall be from July 1 of the preceding year to June 30 of the report year.

ARTICLE 3 SPECIAL CONDITIONS

Section 3.1 Where the Grantee is acting as overall Project Manager, said employees payroll and indirect costs may be charged directly to the Project. The Department will approve the employees and their rates and surcharges if the Grantee charges such costs to the Project.

Section 3.2 Where applicable and notwithstanding any other provision in this Agreement, the Grantee hereby agrees to provide or have provided continuous maintenance in accordance with the Grantee's standards (as informed by AREMA recommended practices) and, as between the Grantee and the Department, to assume all liability in connection with the implementation and operation of the Project.

Section 3.3 All funds granted under this Agreement shall be expended by the Grantee in accordance with the Department's standard procurement procedures, applicable Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times

to all applicable laws, rules, regulations, and orders.

Section 3.4 Notwithstanding any other provision in this Agreement, funding provided pursuant to this Agreement shall be for the reimbursement of Eligible Project Costs and for no other purpose. All purchases made as a matter of this Agreement shall be charged at the actual cost(s) to the Grantee with no markups.

ARTICLE 4 REIMBURSEMENT OF GRANTEE

Section 4.1 The Grantee shall render invoices no more frequently than once every 30 calendar days for reimbursement of Eligible Project Costs. Each invoice must reflect the percentage of financial participation agreed to by the Department and the Grantee in Article 1.

Section 4.2 Invoices shall be submitted using the form provided as Attachment C of this Agreement. Upon approval by the Department for payment, invoices will be paid within 30 calendar days. Invoices shall be accompanied by the most recent monthly progress report.

Section 4.3 Invoices or line item(s) in invoices not found to be complete as to form or in accordance to the provisions of this Agreement will be separated and a partial payment may be made by the Department on eligible reimbursable expenditures upon approval by the Department.

Section 4.4 The Department shall have the right to request an accounting or more detailed statement of invoices. Upon such a request, the Grantee shall provide the requested information within 30 calendar days.

Section 4.5 Any items of Work reimbursed to the Grantee by the Department and found not to be in accordance with the agreed Work or any applicable federal, state, or local law by the Department in its final audits will be repaid to the Department by the Grantee within 60 calendar days upon submission of the items so disapproved.

Section 4.6 The Grantee is responsible for payment of all contractors. The Grantee shall attach to each invoice copies of contractor's paid invoices.

ARTICLE 5 COMPLETION AND ACCEPTANCE

Section 5.1 Upon completion of the work, the Grantee shall certify in writing that the Work

has been completed.

Section 5.2 The Department shall have 60 calendar days after Grantee's certification of completion of the Work in which to provide final acceptance of or reject any portion of the Work in writing. Any such rejection by the Department shall be sent to the Grantee in writing.

Section 5.3 If no rejection is sent by the Department within the 60 calendar days, the Performance Period begins the next January 1.

Section 5.4 Final billing for reimbursement shall be provided to the Department within 60 calendar days after Grantee's certification of completion. If Work is accepted by the Department, the final invoice shall be paid as described in Article 4.

Section 5.5 After 60 calendar days from payment of the Final Project invoice, the Department will withdraw any remaining Commonwealth funds as outlined in Article 8.

Section 5.6 Acceptance of the Work by the Department shall not be construed to inure to the benefit of any third parties or create any additional liability to the Commonwealth, as between the Grantee and the Commonwealth, nor does it relieve the Grantee of its liability under this Agreement.

Section 5.7 Any work necessary in connection with the Project, which is not specifically provided for as Work by this Agreement, including but not limited to Re-work, shall be the responsibility of the Grantee.

ARTICLE 6 INTEREST IN COMPLETED WORK

Section 6.1 The parties acknowledge and agree that the Department has an ownership interest in ensuring that the improvements created by the Project continue to serve as a functioning railway transportation facility as authorized by the United States Surface Transportation Board for 15 years after acceptance of the improvement by the Department. Attachment D provides a listing of all grants including this funding agreement and reimbursements for improvements funded by the Department and the Grantee for improvements on the (Name of Grantee). As a result of this and previous agreements, the Commonwealth of Virginia has established a contingent interest ownership valued at \$XXX,XXX, which does not include interest costs that would be added to the overall value calculated based on statutory legal rate of interest as determined by the Virginia General Assembly for the date of repayment. For purposes of this Agreement, the value of the Department's ownership interest shall be the value of the payments made by the Department to the Grantee with respect to the improvement less depreciation

calculated over 15 years on a straight-line basis beginning on the date of acceptance of the improvement(s) resulting from this Agreement. Occurring at the end of each 12-month period from date of this Agreement thereafter, one-fifteenth the of the Department's ownership interest shall be subtracted from the total amount paid the Grantee by the Department.

Section 6.2 If the Grantee does not continue to utilize the improvements as defined herein, which may include but are not limited to, discontinuance of service, abandonment of the improvements, or not using the tracks as contemplated by § 33.1-221.1:1.2 of the Code of Virginia 1950, as amended, the Department shall be reimbursed the value of its ownership interest in the improvements as determined in accordance with Section 6.1 plus interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the time of acceptance. Notwithstanding the foregoing, the Grantee, upon written approval of the Director, shall have the right to expand, modify, rearrange, and/or remove any part of the improvements as it deems necessary provided that such expansion, modification, rearrangement or removal is consistent with the continued operation of the improvements within the Project Funding Agreement period. Any cost involved in the relocation or removal of said Project shall be borne by the Grantee or using business. In the event that the Grantee modifies, expands, rearranges, and/or removes any part of the improvements as deemed necessary, the value of the Commonwealth's ownership interest shall remain in the Project as described in Section 6.1. This section shall be binding on the Grantee's successors and assigns.

Section 6.3 The Grantee may, with the Director's written approval, purchase, sell or transfer, remove or otherwise dispose of the Project constructed under this Agreement. If the Grantee wishes to sell, transfer or otherwise dispose of the Project, the Grantee must notify the Department of its intent to sell or transfer the Project in sufficient time for the Department to participate in negotiations concerning the preservation of its contingent interest. In the event of sale or transfer of the Project, the Department must be provided with a contingent interest in the Project by the Grantee's successor or assign in accordance with Section 6.1. Such contingent interest must be approved by the Department prior to the sale or transfer. In case purchase of the Department's contingent interest by the Grantee or the Grantee's successors or assigns, the Department will be reimbursed the value of its ownership interest as determined in Section 6.1 plus interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the time of acceptance.

Section 6.4 The Grantee hereby certifies that it either owns, controls, or has executed an agreement to purchase or lease the real property upon which the Project will occur and will protect and respect the Department's interest in the Project. This section shall be binding on the Grantee's successors and assigns. The Grantee certifies that it has received approvals relative to easements and encroachments that occur as a result of this Project.

ARTICLE 7 SMALL, WOMEN, AND MINORITY (SWAM)

Section 7.1 The Grantee is encouraged to seek and use Small, Women, and Minority (SWAM) enterprises in relation to this Agreement. A SWAM achievement goal of forty percent of total eligible grant expenditures is established by execution of this Agreement by the parties. The Grantee must report such SWAM activity quarterly beginning at the end of the first three month period from date of Agreement and ending upon the quarter that the last payment to the Grantee by the Department is made. The Grantee shall use the reporting form provided in Attachment E and include documentation of efforts to achieve the SWAM goal.

ARTICLE 8 TERMINATION

Section 8.1 The Grantee may terminate the Project at any time by notifying the Department in writing 30 calendar days in advance. If such termination occurs, the Grantee shall repay the Department for all funds received within 60 days following notification by the Department of the amount to be repaid. This amount shall include interest as specified in Section 7.7.

Section 8.2 The Grantee may terminate the Agreement at any time it is determined by Virginia law that the Department has materially breached this Agreement and has failed to cure such breach within 90 calendar days. Should such occur, the Grantee shall be entitled to whatever remedies may be provided for by law or in equity. Furthermore, the Grantee will not be required to repay any funds that have been provided by Department pursuant to this Agreement.

Section 8.3 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time it is determined that Grantee has materially breached this Agreement and has failed to cure said breach after 90 calendar days notice or if compliance within 90 calendar days is not reasonable as solely determined by the Department, then within such time period as the Department may agree. The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final. If this Agreement is terminated by the Department for the Grantee's material breach, the Grantee will repay the Department all funds received for the Project. Such payment shall be made within 60 calendar days following notification by the Department of the amount to be repaid.

Section 8.4 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time if (1) the Department fails to secure the necessary budgetary appropriation to fulfill its obligations under this Agreement, (2) the Grantee becomes insolvent, (3) the Grantee fails to apply provided funds as intended under this Agreement, or (4) statutory changes affecting the Program under which these funds were provided render funding with this Agreement impossible. Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final.

Section 8.5 Should the Project be terminated by Department as a result of lack of funds or statutory changes, the Department will exercise best efforts to seek funds to be used to defray costs of shutting down and the Grantee need not repay any funds already paid to the Grantee if such funds represent eligible Project Costs that the Grantee has incurred. The Grantee shall repay the Department for all funds paid associated with this Agreement should the Grantee become insolvent or fails to apply funds as intended under this Agreement.

Section 8.6 Delays caused by Force Majeure events shall not be deemed a breach or default under this Agreement. Upon the occasion of a Force Majeure event which makes it impossible for the Project to be continued and/or moots the need for the Project, the Department may terminate this Agreement at its discretion.

The Grantee shall notify the Department within five working days of its opinion that a Force Majeure Event(s) has occurred and provide the Department with information to support its opinion. The Department will complete its review based on the information submitted by the Grantee within 10 working days of receipt of such information, and notify the Grantee of its opinion. Both parties must agree that a Force Majeure Event has occurred before an event will be deemed a Force Majeure Event.

Section 8.7 All reimbursement of the Department for funds granted by the Department under any Article of this Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment is made by the Department to date of repayment by the Grantee. This section shall be binding on the Grantee's successors and assigns.

ARTICLE 9 ASSIGNMENT

Section 9.1 Assignment of any portion of this Agreement shall have the prior written approval of Department.

ARTICLE 10 TERM, ENTIRE AGREEMENT, AND AMENDMENT

Section 10.1 This Agreement shall be effective immediately upon its execution.

Section 10.2 This Agreement constitutes the entire and exclusive agreement between the parties relating to all specific matters covered herein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

Section 10.3 This Agreement may be altered, amended, or revoked only by an instrument in writing signed by both of the parties.

ARTICLE 11 NOTICES AND DESIGNATED REPRESENTATIVE

Section 11.1 All notices or communications with respect to this Agreement, shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a party to the other parties.

Department: Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
Attention: William S. Pittard, Chief Financial Officer
steve.pittard@drpt.virginia.gov

Kevin B. Page, Chief of Rail Transportation
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
kevin.page@drpt.virginia.gov

Nancy C. Auth, Senior Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
NAuth@oag.state.va.us

Grantee: (Name of Grantee)

Designated
Representative: Kevin B. Page, Chief of Rail Transportation
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
kevin.page@drpt.virginia.gov

(Name of Grantee)

ARTICLE 12 NON-DISCRIMINATION

Section 12.1 In the solicitation or awarding of any contracts directly related to this Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia state law relating to discrimination in employment.

Section 12.2 During the performance of this Agreement, the Grantee agrees as follows: (a) the Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The Grantee agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that the Grantee, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

ARTICLE 13 MISCELLANEOUS PROVISIONS

Section 13.1 The Grantee agrees that its plans will incorporate statewide plans or projects that support freight and/or passenger rail growth or to make every reasonable attempt in its designs not to preclude specified statewide passenger and or freight projects in the future.

Section 13.2 The Grantee shall at all times observe and comply with all federal, state and local laws, regulations, ordinances, orders and decrees applicable to the work or subsequent operation. The obligations of this section shall survive the termination or completion of this Agreement.

Section 13.3 Data or information provided by the Grantee to the Department that is protected under federal or state law, or otherwise deemed by the Grantee and the Department as proprietary, will be so and marked by the Grantee on each document prior to its submission. The Department shall hold and protect said documents identified as proprietary in accordance to law. For the purposes of this Agreement, proprietary items are so specified in Attachment F.

Section 13.4 The Grantee shall maintain all books, documents, papers, accounting records, and any other evidence, showing actual time devoted and supporting the cost incurred. Such books, documents, papers, accounting records, etc. shall be kept in accordance with commonly accepted business accounting procedures. Such information shall be made available at their respective offices at all reasonable times during the Agreement period and for a period of five years from the date of final payment by the Department to the Grantee for audit and inspection. Copies of such information shall be furnished to the Department upon request. The Department shall have the absolute right to audit to determine compliance with the terms of this Agreement.

Section 13.5 The Grantee shall be responsible for all damage to life and property due to its activities and those of its subcontractors, agents or employees, in connection with the work performed under this Agreement. In the event that the Grantee obtains insurance to cover this risk, the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, and the officers or agents and employees of these entities shall be listed as additional insureds. Acceptance of the Work by the Department shall not waive any of the rights of the Department contained in this section nor release the Grantee from any responsibilities or duties contained in this Agreement. Further, it is expressly understood that the Grantee shall indemnify, defend and

hold harmless the Commonwealth of Virginia, the Department of Rail and Public Transportation, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Grantee or its subcontractors of the work covered by this Agreement and, if applicable the subsequent operation of rail service over this Project. The obligations of this section shall survive the termination or completion of this Agreement.

Section 13.6 During the performance of this Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

Section 13.7 No member, officer, or employee of the Department, during his tenure or one year thereafter, shall have any interest, direct or indirect, that is prohibited by Virginia law in this Agreement.

Section 13.8 This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Virginia.

Section 13.9 If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the parties to this Agreement.

Section 13.10 This Agreement, when properly executed, shall be binding upon the parties hereto and their respective successors and assigns.

IN TESTIMONY THEREOF, the parties have caused this Agreement to be executed, each by its duly authorized officers, all as of the day, month, and year hereinabove first written.

COMMONWEALTH OF VIRGINIA
Department of Rail and Public Transportation

WITNESS

BY: _____
(Name of Director)
Director

(NAME OF GRANTEE)

Seal

WITNESS

BY: _____

NAME: _____

TITLE: _____

Attachment A – Sample Monthly Progress Report

Progress Report

Date: ____/____/____

DRPT Project: Number: _____

Grantee Project: _____

Project Type:

New Construction____ Rehabilitation ____

Study ____ Rail Infrastructure ____

Equipment/Rolling Stock ____

Signals/Communication ____

Other: ____

Reporting Period Range: ____/____/____ thru ____/____/____

Commonwealth Project Funding:

Total Funds Allocated \$

Total Funds Spent: \$

Project Fund Balance: \$

Percent Spent to date: ____%

Minority Business participation this period: Yes ____ No ____

Amount spent this period: \$

Total amount spent: \$

Schedule

Project is on schedule: ____

Project is not on schedule: ____

Project is \leq 5% behind schedule

Project is > 5% behind schedule

Project is > 10% behind schedule

Percent Project Complete: ____%

Response plan:

Milestones Completed

- Scoping ____/____/____
- Construction or Study ____/____/____

Project Issue(s) and Update Narrative:

1.

Submitted by: _____ Date: _____

Attachment B - Letter of No Prejudice

Month Day, Year

Name

Title

Railroad Name

Railroad Address Line 1

Railroad Address Line 2

Re: *Project Name*

Letter of No Prejudice

Dear *Name*:

On *Month Day, Year*, the Commonwealth Transportation Board (CTB) allocated \$*Amount* of Rail Preservation funds to the *Railroad Name* to assist in funding projects requested in its application dated *Month Day, Year*.

The Rail Preservation Contract funding agreements for this program are being finalized by DRPT and the Office of the Attorney General. DRPT intends to forward these agreements to the Rail Preservation Program recipients for execution within the next week. Until such time as the Rail Preservation Program agreements are executed, the *Railroad Name* is hereby authorized to begin incurring expenses toward the development of the final specifications, budget, and schedule for submission to DRPT for approval and issuance of Notice to Proceed to construction. Eligible expenses incurred after *Month Day, Year* from the development of the final specifications, project budget, and schedule will be eligible for reimbursement when an agreement is executed between the parties and DRPT receives and approves an acceptable invoice(s) for payment. However, if for some reason a Rail Preservation Agreement is not executed, then DRPT has no obligation to reimburse *Railroad Name* for any expenses. The contract agreement that will be forwarded to you will be very similar to the agreements executed in the past with the exception of the provision that provides for the amortization of the Commonwealth's contingent interest ownership. There will be no provisions included in these nor in next year's Rail Preservation contract that requires agreement on a performance metric.

If you have any questions or comments concerning this Letter of No Prejudice, please contact Kevin Page, Chief of Rail Transportation, at (804) 786-3963.

Sincerely,

(Name of Director)

Director

C: Kevin B. Page

Attachment C – Sample Project Invoice Page 1

DRPT Voucher: _____

Department of Rail and Public Transportation Invoice and Authorization Form

Organization Name: _____

EIN: #####-##

Invoice Date DD-MM-YYYY

Invoice # 1

New Address, If applicable

Project Agreement Name: Sample Invoice Name

Project Number: _____

	Federal	State	Local	Total
Total Contract Amount	\$ -	\$ -	\$ -	\$ -
Total of Previous Payments	\$ -	\$ -	\$ -	\$ -
Total Expended This Period	\$ -	\$ -	\$ -	\$ -
Balance Remaining After This Invoice	\$ -	\$ -	\$ -	\$ -

Total Reimbursable Amt for this Invoice \$ -

I certify that the grantee agency has incurred expenses in accordance with the project agreement and that these funds have not been previously requested.

Grantee Authorized Signature _____

Title _____

Note: Percentage calculations are rounded to the nearest dollar.

THIS AREA FOR DRPT USE ONLY:

Grant Manager Signature _____

Date _____

Name Here _____

Check here to close project after this request. _____

Form# DRPT06302003F

Attachment C – Sample Project Invoice Page 2

Payment Number	Total Expended This Period	Date of Request	Previous Total
1			\$0.00
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attachment D - Listing of Grants to Railroad

Attachment E - SWAM Certification

SWAM Code Section

§ [2.2-4310](#). Discrimination prohibited; participation of small, women- and minority-owned business.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § [15.2-965.1](#), and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on small, women- and minority-owned business procurement to the Department of Minority Business Enterprise in a form specified by the Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

E. As used in this section:

"Minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

"Small business" means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law.

This Area Left Intentionally Blank

SWAM Reporting Form

Grantee Quarterly SWAM Expenditure Report

Fiscal Year 2008 Quarter 1st From Date of Agreement

Agreement Date: _____

Grantee Name: _____
Grant Type: Rail Preservation FY2008
Name of Contact Person: _____
Title of Contact Person: _____
Phone number: _____
Email address: _____

Report only dollars of actual payments to vendors or expenditures of eligible Grantee force work, provided that Grantee.

I. Table A: Total DRPT Grant Expenditures And SWAM Prime Contracting & Purchasing Expenditures

SWAM PRIME CONTRACTING & PURCHASING EXPENDITURES: The amount spent with DMBE certified SWAM businesses OR eligible Grantee work force, provided Grantee is a SWAM, for work directly traceable to the fulfillment of a Grantee's contract or purchase order. Attach lists of vendor names, Federal Tax ID's and payment amounts to the report

A. Total DRPT Grant Expenditures	B. Total Expenditures with Certified MBE	C. Total Expenditures with Certified WBE	D. Total Expenditures with Certified SBE
\$	\$	\$	\$

(MBE) Minority Business Enterprise, (WBE) Women-owned Business Enterprise, (SBE) Small Business Enterprise

Percentage of SWAM participation for this report period. $(B+C+D)/A=$ _____

II. Table B: SWAM Contracting Expenditure Worksheet

List below the names of contractors, Federal Tax IDs, SWAM designation, Contract Number, and payment amounts to the contractor

Name of Contractor	Federal Tax ID	MBE, WBE or SBE	Description of Work	Contract NO/PO	Dollar Amount
Total Expenditures					

Completed forms must be submitted to:

**Department of Rail and Public Transportation
Attention: Chief of Rail Transportation
1313 East Main Street
P.O. Box 590
Richmond, VA 23219**

Developed by DRPT October 2007 from DMBE Supplier Diversity Expenditure Report: Revised December 5, 2005

Attachment F - List of Grantee's Proprietary Items

APPENDIX D

Application

**Commonwealth of Virginia
Department of Rail and Public Transportation
Rail Preservation Program
Application**

Application Date:

Applicant:

Contact Person:

Telephone Number:

Description of Proposed Project:

Estimated Cost of Proposed Project List by Task: \$

Estimated Annual Number of Carloads Anticipated for Year of Grant Applied For:

Number of Annual Carloads Most Recent Year End:

Miles of Railroad Operated in Virginia by the Line Applied For:

Total Miles of Line (if line also continues outside of Virginia):

Estimated Number of People Employed or Retained during this Grant Year applied for:

Expected Starting and Finishing Dates of Project:

Counties, Cities and Towns Impacted by this Project:

Statement that SWAM goals, established for the project, will be met:

Applicant must attach a letter of certification stating that local match funds are available and that they will be provided for by the Applicant/Grantee if the application is approved and funded by the Commonwealth.

Any Other Information Deemed Relevant to the Proposed Project: Attached.

Application Must Be Mailed To:

Director
Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond Virginia, 23218-0590

Note: A Resolution from the local governing body or Transportation District Commission supporting the project must accompany this application to be considered for funding. Additional information may be required and requested by the Department in the process of evaluating this application.